

Message Text

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R 171747Z MAR 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 6598
INFO AMEMBASSY BERLIN
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E.O. 11652: N/A
TAGS: PFOR, PINT, GW
SUBJECT: BONN CONTINUES TO DEBATE THE "BUGGING AFFAIR"

REF: BONN 3793

SUMMARY. NEW REVELATIONS BY "DER SPIEGEL" HAVE KEPT AN
INTENSE PUBLIC AND PRIVATE SPOTLIGHT ON "OPERATION
TRASH." CHANCELLOR SCHMIDT AND THE COALITION PARTIES
HAVE GIVEN MAIHOFFER QUALIFIED SUPPORT, ENOUGH TO KEEP
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HIM IN THE CABINET BUT NOT TO ERASE GRAVE DOUBTS OVER
HIS HANDLING OF THE 1976 BUGGING OPERATION AGAINST
TRAUBE. THE CDU/CSU HAS NOT CALLED FOR MAIHOFFER'S
RESIGNATION, BUT HAS REJECTED HIS CONSTITUTIONAL DEFENSE
AND ACCUSED HIM OF NONFEASANCE IN OFFICE. IN THE
MARCH 16 BUNDESTAG DEBATE, MAIHOFFER AGAIN DEFENDED HIS
PERFORMANCE IN LIGHT OF THE TERRORISM NEURALGIA OF

1974/1975; HE ALSO EXONERATED TRAUBE AND HOPED THAT HIS STATEMENT WOULD REMOVE THE PENALTIES WHICH THE SCIENTIST HAD SUFFERED. THE BUNDESTAG WANTS A BETTER PARLIAMENTARY CONTROL OVER BFV ACTIVITIES, BUT SENSES THAT BUGGING MAY BE ILL-SUITED FOR NEW LEGISLATION. THE DILEMMA, AND THE UNCERTAINTY RE WHAT TO DO ABOUT IT, REMAIN. END SUMMARY.

1. FOR THREE WEEKS THE "BUGGING AFFAIR" HAS HELD CENTER STAGE IN BONN. IT HAS GROWN INTO A TRAUBE/MAIHOFFER AFFAIR AND HAS SENT RIPPLES OF CONCERN THROUGH MANY LEVELS OF THIS SOCIETY. SINCE WE WROTE THE REF, "DER SPIEGEL" HAS PUBLISHED NEW ARTICLES WHICH SUGGEST THAT MAIHOFFER HAD ONLY APPROVED THE BUGGING OPERATION AGAINST TRAUBE TWO WEEKS AFTER THE FACT, AND THAT HE THUS DOES NOT CONTROL THE OFFICE FOR THE PROTECTION OF THE CONSTITUTION (BFV) WHICH REPORTS TO HIM. MAIHOFFER'S EFFORTS TO DENY THIS CHARGE LED TO FURTHER MEETINGS WITH CHANCELLOR SCHMIDT, THE INTERIOR AFFAIRS COMMITTEE, AND THE COALITION LEADERSHIPS. THEY DID NOT ALLAY GROWING CONCERNS OVER THE BFV OPERATION.

2. CHANCELLOR SCHMIDT DISLIKES UNTIDY MANAGEMENT. HE WAS THUS DOUBLY ANGERED BY MAIHOFFER'S ADMITTED FAILURE TO RUN A TIGHT SHIP IN THE INTERIOR MINISTRY (SEE BELOW), AND BY THE OPPORTUNITY WHICH THIS CASE GAVE TO THE CDU/CSU TO MAKE POINTS. AFTER READING MAIHOFFER'S REPORT, SCHMIDT WROTE A LETTER WHICH GAVE HIS MINISTER AT BEST A QUALIFIED APPROVAL FOR WHAT HAD BEEN DONE. (BOTH LIMITED OFFICIAL USE

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DOCUMENTS WERE PUBLISHED.) SCHMIDT REAFFIRMED HIS BASIC EARLIER SUPPORT FOR MAIHOFFER BUT CRITICIZED THE COMMUNICATIONS BREAKDOWN BETWEEN THE BFV AND THE MINISTRY. HE SUPPORTED MAIHOFFER'S INTENTION TO MEET WITH TRAUBE AND HIS ATTORNEY TO CLEAR UP REMAINING QUESTIONS. IN A POINTED FINAL PARAGRAPH, HE ORDERED MAIHOFFER TO "KEEP ME CURRENT" ON FURTHER DEVELOPMENTS.

3. MAIHOFFER READ THE GOVERNMENT STATEMENT ON THIS AFFAIR IN THE MARCH 16 BUNDESTAG SESSION. HE JUSTIFIED THE BUGGING OPERATION, AS HE HAD BEFORE (REF), IN TERMS OF THE WAVE OF TERRORISM WHICH HAD ALARMED FRG OFFICIALS IN 1974/1975. HE CLAIMED THAT THE NEED TO AVOID A POTENTIALLY GRAVE DANGER (I.E., TERRORIST ACCESS TO NUCLEAR KNOWLEDGE OR FACILITIES WHICH TRAUBE COULD PROVIDE) HAD REQUIRED A UNIQUE INFRINGEMENT OF TRAUBE'S PRIVACY. MAIHOFFER ADMITTED THAT A "FAILURE IN TRANSMISSION" HAD PREVENTED HIM FROM LEARNING THAT THE BUG HAD BEEN PLANTED UNTIL AFTER THE FACT, BUT HE INSISTED

THAT HE HAD GIVEN BASIC APPROVAL FOR THIS OPERATION
BEFOREHAND.

A. MAIHOFFER MADE A THREE-POINT COMMENT ON THE OUTCOME
OF THE LENGTHY TALKS WHICH TRAUBE AND HIS ATTORNEYS HAD
HELD IN THE MINISTRY.

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- (1) THE MINISTRY HAD TOLD TRAUBE OF THE EVIDENCE
WHICH THE BFV HELD IN 1975 AND WHICH GAVE JUSTIFIED
CAUSE FOR INTENSIVE EFFORTS TO CLEAR UP THE SITUATION.
"DR. TRAUBE DOES NOT IGNORE THIS PREMISE."
- (2) IN HIS MARCH 15 TALK WITH MAIHOFFER, TRAUBE HAD

EXPLAINED HIS 1975 UNDERSTANDING OF EVENTS. ON THAT BASIS, MAIHOFFER DECLARED THAT NO REMAINING SUSPICIONS EXIST AGAINST TRAUBE.
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(3) MAIHOFFER EXPRESSED THE VIEW THAT THIS CLARIFICATION WILL HELP TO REMOVE THE LIABILITIES WHICH TRAUBE HAS SUFFERED. HE ADDED, THOUGH, THAT THE FRG HAD NOT BEEN RESPONSIBLE FOR THE PRESS ACCOUNTS WHICH HAD "EXPOSED" TRAUBE. MAIHOFFER CONFIRMED THAT HE WILL SEND PRIVATE, MORE DETAILED PERS OF ASSURANCE TO TRAUBE.

B. IN SUMMARY, MAIHOFFER EMPHASIZED THE UNIQUE CIRCUMSTANCES OF THIS CASE. HE MADE NO EFFORT TO HIDE THE PANG OF CONSCIENCE WHICH HE HAD SUFFERED IN SQUARING "OPERATION TRASH" WITH HIS PRINCIPLE: "WHEN IN DOUBT, FOR LIBERTY." IN REPLY TO SEVERAL QUESTIONS, HE ASSURED THE BUNDESTAG THAT THERE ARE NO OTHER BUGS IN HIS "AREA OF RESPONSIBILITY." (THIS ANSWER DID NOT GO DOWN WELL.) THE COALITION DEPUTIES GAVE ALMOST NO APPLAUSE TO MAIHOFFER'S DECLARATION.

C. THE CDU/CSU SPEAKERS DID NOT DEMAND THAT MAIHOFFER RESIGN BUT CITED INSTEAD STATEMENTS BY SPD, JUSO, JUDO AND OTHERS WHO HAD SO DEMANDED SEVERAL SPEAKERS CLAIMED THE GOVERNMENT IS SEEKING TO PRESERVE THE COALITION RATHER THAN GET TO THE BOTTOM OF THINGS. THE OPPOSITION CHALLENGED THE CONSTITUTIONALITY OF MAIHOFFER'S ACTION, AND REJECTED HIS EARLIER REFERENCE TO A "SUPRA-LEGAL STATE OF EMERGENCY." WALTER WALLMANN (CDU) CONCLUDED THAT MAIHOFFER HAD SHOWN THAT THE SPD/FDP COALITION IS UNABLE EFFECTIVELY TO DEFEND, ON THE BASIS OF PURELY LIBERAL PRINCIPLES, THE STATE AGAINST THOSE TRYING TO UNDERMINE IT. SPRANGER (CSU) ARGUED THAT THE TRUE SCANDAL IN THE AFFAIR HAD BEEN THE LEAK OF SECRET DOCUMENTS AND THEIR PUBLICATION IN "DER SPIEGEL."

D. WHILE THE COALITION DEPUTIES GENERALLY SUPPORTED MAIHOFFER, MANY MADE PLAIN THEIR GRAVE DOUBTS OVER WHAT HAD BEEN DONE AND, MORE IMPORTANTLY, OVER THE IMPLICATIONS OF "OPERATION TRASH" FOR THE FUTURE. HUGO BRANDT (SPD)
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DECLARED THAT HIS PARTY SHARES RESPONSIBILITY WITH MAIHOFFER BUT THAT "ALL OF US" HAVE BEEN DAMAGED BY THIS DEBATE. HE REJECTED MAIHOFFER'S REFERENCE TO A "SUPRA-

LEGAL STATE OF EMERGENCY" AS DANGEROUS, AND HE IMPLIED THAT MAIHOFFER HAD LEANED TOO FAR IN THE DIRECTION OF "STAATSRATION." BRANDT ALSO EXPRESSED THE FEAR THAT THIS CASE MIGHT CAUSE THE PUBLIC TO LOSE CONFIDENCE IN THE CONSTITUTION AND TO DEVELOP A FEAR OF THE BFV. FINALLY, SCHMIDT CRITICIZED THE INFORMATION PROBLEM AND CALLED FOR EFFECTIVE PARLIAMENTARY CONTROL. (THE SPD STRONGLY APPLAUDED THOSE REMARKS AND THE FRAKTION LEADER, WEHNER, A CRITIC OF THE AFFAIR, DEMONSTRATIVELY SHOOK SCHMIDT'S HAND.) TWO FDP DELEGATES -- MARTIN BANGEMANN AND INGRID MATTHAEUS -- EXPLICITLY CRITICIZED MAIHOFFER.

4. A LEITMOTIF IN THIS DEBATE WAS THE QUESTION OF HOW THE BUNDESTAG SHOULD COPE WITH SUCH GRAVE CONSTITUTIONAL PROBLEMS IN THE FUTURE. HERE, THE DEBATE WAS INCON-

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CLUSIVE. SOME DEPUTIES PROPOSED THAT THE G-10 COMMITTEE (WHICH OVERSEES SURVEILLANCE OF MAIL AND PHONE CONVERSATIONS) COVER BUGGING OPERATIONS AS WELL; SOME DEMANDED THAT THE "VERTRAUENSMAENNERGREMIUM" DO SO. ONE SENSED A STRONG AMBIVALENCE IN THE DISCUSSION: ON THE ONE HAND, THE BUNDESTAG WANTED NO REPEAT OF "OPERATION TRASH"; ON THE OTHER, IT WANTED A BETTER MECHANISM TO COPE WITH FUTURE BFV EVENTUALITIES. THE PARTIES APPEAR TO HAVE LIMITED OFFICIAL USE

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AGREED IN ADVANCE TO KEEP THE MARCH 16 DEBATE IN BOUNDS EXCEPT FOR MAIHOFFER, NO TOP POLITICIAN SPOKE. IN EFFECT, THE SPD/FDP CONDUCTED A DAMAGE-LIMITING EXERCISE. EARLIER EXPRESSIONS OF SUPPORT FROM GENSCHER, SCHMIDT, AND INTERIOR AFFAIRS COMMITTEE CHAIRMAN WERNITZ (SPD) HAD NOT STIFLED THE SUBSTANTIAL UNHAPPINESS OVER MAIHOFFER'S ACTION. THE COALITION HAD TO ALLOW FRANK CRITICISMS ON THE FLOOR IN ORDER TO AVOID THE RISK THAT SOME OF ITS DEPUTIES MIGHT CALL FOR MAIHOFFER'S RESIGNATION.

5. TO DATE, THE COURSE OF THE TRAUBE/MAIHOFFER AFFAIR REAFFIRMS THE WISDOM OF JUSTICE HOLMES' POINT THAT "HARD CASES MAKE BAD LAW." BY ANY CRITERION, THIS IS A HARD CASE. THERE ARE NO EASY ANSWERS. THE LAW CAN BE ARGUED BOTH WAYS--AS MAIHOFFER FRANKLY ADMITTED ON MARCH 16. MOREOVER, THERE ARE SECURITY PROBLEMS WHICH CANNOT EASILY BE REGULATED BY LAW. CONCERNING MAIHOFFER, THE CASE HAS ELEMENTS OF TRAGEDY AS WELL: AUGSTEIN, THE SPIEGEL EDITOR WHO MADE THE DECISION TO PUBLISH THE BUGGING FILE, ADMITTED THIS POINT WEEKS AGO. THOUGH BATTERED, THE MINISTER IS STILL IN OFFICE, AND IN CHARGE OF THE BFV. THE PROBLEMS OF CIVIL LIBERTIES, SAFE ATOMIC POWER, AND TERRORISM REMAIN. IN THE END, THE GREATEST CONTRIBUTION OF THE TRAUBE CASE MAY BE THAT FRG OFFICIALS AND PRIVATE CITIZENS WILL PONDER MORE CAREFULLY THE TRADE-OFFS IN BALANCING FREEDOM AGAINST SECURITY, CIVIL RIGHTS AGAINST THE SAFETY OF THE STATE.

STOESSEL

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Message Attributes

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